

Hon. Carmine Cornelio
Pima County Superior Court
110 W. Congress
Tucson, AZ 85701

**IN THE SUPREME COURT
STATE OF ARIZONA**

IN THE MATTER OF PETITION)
TO AMEND RULE OF THE SUPREME)
COURT, RULE 122)

Supreme Court No. R-07-0016
**Comments of the Pima County
Bar Re: Petition to Amend
Rule 122, Arizona Rules of
the Supreme Court**

_____)

The Petition submitted by KPNX Broadcasting Company seeks to amend a Rule which permits camera access to court proceedings only in the discretion of the trial judge to one that creates a presumption of camera coverage and imposes on the trial court additional burdens of conducting hearings and making findings before that presumption can be overcome. Appeals and Special Actions from those findings for either denials or restrictions are contemplated by both the Petition and Amended Rule. If approved, the natural consequence will be additional costs and delay in proceedings, as well as emotional costs to parties and victims.

In the support of the need for the proposed Rule change, KPNX offers an unsupported statement that;

“Camera coverage requests have been denied with increasing frequency in recent years . . . and often in cases of acute public interest and concern.”

The anecdotal support for this “factual claim” are cases involving sexual abuse of minors. Frankly, it is not too hard to imagine why the trial judge would, in such cases, exercise their discretion in prohibiting cameras.

The Petition cites as critical support to creating a presumption in favor of cameras, a study in New York conducted in 1987.¹

¹After the study, New York has barred cameras and has not held a televised trial. See 10 *Seton Hall* Const. L.J. 1053 (2000). This comment’s conclusion is that the negative effects of cameras are pervasive, yet difficult to quantify or establish by evidence. If this is correct, it makes the findings required by the proposed rule a difficult task indeed.

Moreover, that study was, obviously, conducted prior to the explosive growth in the Internet. This new form of information sharing, has created the more modern issue of whom, exactly, are “broadcast journalists.” The Petition of KPNX and proposed Rule change fails to begin considering the new issues that may be associated with Internet journalism, blogs, podcasts, YouTube postings, and streaming video. Does a “camera” of Cousin Joe (who has a family blog) have a presumption and procedural safeguard when he wants to broadcast the family divorce?

There is no question that both the public and press have strong constitutional and presumptive right to attend both criminal and civil court proceedings. The Petition proposes to equate, however, public access with cameras. We read every day that conventional broadcast T.V. and nightly news audience viewing is down. The interest of KPNX, in the proposed Rule change, is, perhaps, based more on its commercial self interest in addressing dwindling revenues than it is in providing “public access.”

When the U.S. Senate was considering cameras in Federal courtrooms, the U.S. Judicial Conference stated its strong opposition. The Conference’s opposition was presented by Chief Judge Edward Becker of the 3rd Circuit. Excerpts of his Senate testimony can be found at 67 Def. Couns. J. 429 (2000). In his comments, Chief Judge Becker referred to a Federal Judicial Center study that identified a significant amount of statistical data regarding the negative impact on trials of cameras in the courtroom. KPNX’s Petition fails to address or recognize these concerns.

The Petition cites a small handful of states that have adopted rules that presumptively favor camera coverage in courtroom proceedings. Presumably, those states have adopted such a rule only after due deliberation, debate, and consideration. This would include more than, simply, the posting for a Rule change in the process started by KPNX here.

This opposition and comment to the pending Rule change is not about nor in support of barring the public or the press. Nor does it suggest a ban of cameras. However, in the age of paparazzi, sensationalistic journalism, and viral Internet postings, control and discretion of if, when, where, and how cameras are to allowed needs to be firmly in the hands of trial judges. The time has not come for “procedural safeguards” (as asserted by KPNX) that simply adds another layer of complexity, delay and costs to the trial process. Rights should not be created in favor of cameras when those rights have a real possibility of affecting the rights of those who are parties to litigations. Those constitutional and statutory rights include the rights to a fair and impartial trial, conducted with dignity and in a prompt and timely manner. We should avoid an overlay of unnecessary “satellite” litigation of findings as to cameras, their location and limitations.

It is not hard to imagine, if the “procedural safeguard” suggested by KPNX is adopted what kind of factual findings would have to be made by a trial court to preclude cameras in the courtroom. What happens when such factual findings are publicized? Once the “procedural safeguard” is established and rights created, the next area of argument will be whether limitations on an allowed camera are the least restrictive. How much time will be taken litigating “reasonable alternatives” and restrictions?

Imagine the following: Criminal charges of rape are brought against a popular public figure. The defendant has asserted his rights to a speedy trial. Scheduled to testify are the alleged victim, her adult son, and the ex-mistress of the married defendant. Details are salacious. The trial judge, unwittingly, scheduled the trial during sweep weeks. KPNX asserts its rights to a camera (under the new rule) and demands a hearing and findings. It asserts that the matter is of public interest and that it will “digitize” that names and faces of the alleged victim and her family, but not the ex-mistress. KPNX also demands the “right” to broadcast the hearing on its asserted camera rights. The Entertainment News Network has joined in the Motion of KPNX. The defendant and alleged victim object to any cameras.

As a busy trial level judge, I have not had the time to consider all of the implications and unintended negative consequences of the effect should the proposed Rule be adopted. I submit that no sufficient basis has been supplied in this unvetted Petition to approve it.

RESPECTFULLY SUBMITTED this 15 day of May, 2008

HON. CARMINE CORNELIO